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GOVERNOR

STATE OF MAINE  
DEPARTMENT OF CONSERVATION  
LAND USE REGULATION COMMISSION  
22 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0022

PATRICK McGOWAN  
COMMISSIONER

# PERMIT

## BUILDING PERMIT BP 12697

The staff of the Maine Land Use Regulation Commission after reviewing the application and supporting documents submitted by Susan Smith for Building Permit BP 12697, finds the following facts:

1. Applicant: Susan Smith  
PO Box 391  
Patten, Maine 04765
2. Date of Completed Application: November 22, 2004
3. Location of Proposal: T 5 R 7 WELS, Penobscot County  
Taxation Lot #2 on Plan 13
4. Zoning: (D-RS) Residential Development Subdistrict
5. Lot Size: 1.66 Acres (owned)
6. Principal Building: Proposed Permanent Home (32 ft. by 40 ft.)  
w/ Proposed Shed Addition (10 ft. by 12 ft.)  
w/ Proposed Deck (12 ft. by 40 ft.)  
Proposed Temporary Camper Trailer (8 ft. by 36 ft.)
7. Accessory Structures: Existing Canvas Garage (approx. 12 ft. by 20 ft.)
8. Sewage Disposal: Existing Combined System
9. Affected Waterbody: Lower Shin Pond

The Commission has identified Lower Shin Pond as a management class 5, resource class 2, accessible, developed lake with the following resource ratings: significant fisheries resources, significant scenic resources, significant cultural resources.

10. The applicant's lot was developed with a 1,882 square foot pre-Commission permanent home, which included a lake-side deck and second floor addition balcony. The applicant has also installed a canvas garage. The permanent home with deck was set back 29 feet from the normal high water mark of Lower Shin Pond, approximately 50 feet from the camp road, and at least 15 feet from the nearest property boundary line. The canvas garage is set back at least 100 feet from the normal high water mark of Lower Shin Pond, 50 feet from the camp road, and at least 15 feet from the nearest property boundary line. In 1999, a replacement sewage disposal system was installed. In September of 2004, the applicant's home was destroyed by fire.

11. The applicant proposes to remove the remains of the original home and install a 32 foot by 40 foot permanent home with a 10 foot by 12 foot attached shed onto a permanent foundation, and construct a 12 foot by 40 foot lake-side deck. The permanent home with shed and deck would be set back 50 feet from the normal high water mark of Lower Shin Pond, 20 feet from the camp road, and at least 15 feet from the nearest property boundary line. The applicant also proposes to install a camper trailer temporarily until the home is constructed. The camper would be set back at least 100 feet from the normal high water mark of Lower Shin Pond, 20 feet from the camp road, and at least 15 feet from the nearest property boundary line. The temporary camper and then the new home would be served by the existing replacement sewage disposal system. The total floor area of all structures within 100 feet of the waterbody would be 1880 square feet or approximately 2 square feet less than the original home footprint.
12. The applicant states that the new permanent home cannot be more conforming with respect to the waterbody setback due to the shallow depth of the lot and existing sewage disposal system.
13. Under provisions of Section 10.26,D,1 of the Commission's Land Use Districts and Standards the minimum setback for residential structures is 100 feet from waterbodies such as Lower Shin Pond and 50 feet from roadways such as the camp road.
14. Under provisions of section 10.11,C,2,a of the Commission's Land Use Districts and Standards, a legally existing, nonconforming structure may be reconstructed or replaced with a permit, provided that the permit application is completed and filed within two years of the date of damage, destruction or removal, and provided that the structure was in regular active use within a two year period immediately preceding the damage, destruction, or removal. Reconstruction or replacement must comply with current minimum setback requirements to the greatest possible extent. In determining whether the proposed reconstruction or replacement meets the setback to the greatest possible extent, the Commission may consider the following factors: size of lot, slope of the land, potential for soil erosion and phosphorus export to a waterbody, location of other legally existing structures on the property, location of the septic system and other on-site soils suitable for septic systems, type and amount of vegetation to be removed to accomplish the relocation, and physical condition and type of existing foundation, if any.
15. Under the provisions of Section 10.11,B,6 of the Commission's Land Use Districts and Standards, to allow a structure to become either conforming or less nonconforming to the waterbody setback, the Commission may reduce the road setback to no less than 20 feet in cases of reconstruction or relocation of legally existing structures and construction of new accessory structures on developed, legally existing nonconforming lots.
16. Under provisions of section 10.11,B,1 of the Commission's Land Use Districts and Standards, permits are required for all expansions, reconstructions, relocations, changes of use, or other development of nonconforming structures, uses and lots, except where specifically provided in this section 10.11. In order to obtain a permit, the applicant must meet the approval criteria in 12 M.R.S.A. Section 685-B(4) and demonstrate that the project will not adversely affect surrounding uses and resources and that there is no increase in the extent of nonconformance, except in instances where a road setback is waived by the Commission in order to increase the extent of conformance with a waterbody setback.
17. The facts are otherwise as represented in Building Permit application BP 12697 and supporting documents.

Based upon the above Findings, the staff concludes that:

1. The proposed reconstruction of the permanent home would meet the criteria for a waiver of the Commission's minimum waterbody setback requirement under provisions of Section 10.11,C,2,a of the Commission's Land Use Districts and Standards. The proposed permanent home cannot be more conforming with respect to the waterbody setback because of the shallow depth of the lot and the location of the existing sewage disposal system. The proposed permanent home would be set back to the greatest possible extent and meet the minimum setback requirement from the property boundary lines. The minimum waterbody setback requirement may be waived from 100 feet to 50 feet.
2. The applicant's permanent home and temporary camper would meet the criteria for a waiver of the Commission's minimum road setback requirement under provisions of Section 10.11,B,6 of the Commission's Land Use Districts and Standards. The permanent home and temporary camper would be more conforming than the original home with respect to the minimum waterbody setback requirement. The minimum road setback requirement may be waived from 50 feet to 20 feet.
3. The proposed 1,880 square foot home and temporary camper would be in compliance with Section 10.11,B,1 of the Commission's Land Use Districts and Standards in that the proposed home and camper would not adversely affect surrounding uses and resources and would not increase in the extent of nonconformance. The footprint of the proposed home would not be larger than the footprint of the original home. The camper would meet the minimum waterbody setback requirement.
4. If carried out in compliance with the Conditions below, the proposal will meet the Criteria for Approval, section 685-B(4) of the Commission's Statutes, 12 M.R.S.A.

**Therefore, the staff approves the application of Susan Smith with the following conditions:**

1. Construction activities authorized in this permit must be substantially started within 2 years of the effective date of this permit and substantially completed within 5 years of the effective date of this permit. If such construction activities are not started and completed within this time limitation, this permit shall lapse and no activities shall then occur unless and until a new permit has been granted by the Commission.
2. The permanent home with attached shed and deck must be set back a minimum of 50 feet from the normal high water mark of Lower Shin Pond, 20 feet from the camp road and 15 feet from other property boundary lines.
3. The temporary camper trailer must be set back a minimum of 100 feet from the normal high water mark of Lower Shin Pond, 20 feet from the camp road and 15 feet from other property boundary lines.
4. The temporary camper trailer must be connected to the existing sewage disposal system while on site. The permittee must obtain a plumbing permit from the Local Plumbing Inspector prior to connecting to the sewage disposal system for either the camper or the permanent home.
5. Upon completion of the permanent home the camper trailer must be removed from the lot.
6. Clearing and construction activities, except those necessary to establish sedimentation control devices, shall not begin until all erosion and sedimentation control devices (including ditches, culverts, sediment traps, settling basins, hay bales, silt fences, etc.) have been installed and stabilized. Once in place, such devices shall be maintained to ensure proper functioning. All temporary sedimentation and erosion control devices shall be removed after construction activity has ceased and a cover of healthy

vegetation has established itself or other appropriate permanent control measures have been effectively implemented. Permanent soil stabilization shall be completed within one week of inactivity or completion of construction.

7. Once construction is complete, the permittee shall submit a self-certification form, notifying the Commission that all conditions of approval of this permit have been met. The permittee shall submit all information requested by the Commission demonstrating compliance with the terms of this permit.
8. The scenic character and healthful condition of the area covered under this permit must be maintained. The area must be kept free of litter, trash, junk cars and other vehicles, and any other materials that may constitute a hazardous or nuisance condition.
9. Upon completion of the authorized structures within the terms of this permit, the damaged home must be removed from the lot and all solid waste and other debris disposed of in a proper manner, in compliance with applicable state and federal solid waste laws and rules.

This permit is approved upon the proposal as set forth in the application and supporting documents, except as modified in the above stated conditions, and remains valid only if the permittee complies with all of these conditions. Any variation from the application or the conditions of approval is subject to prior Commission review and approval. Any variation undertaken without Commission approval constitutes a violation of Land Use Regulation Commission law. In addition, any person aggrieved by this decision of the staff may, within 30 days, request that the Commission review the decision.

DONE AND DATED AT AUGUSTA, MAINE, THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2004.

By: Billie J. MacLean  
for Catherine M. Carroll, Director